(13)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 644

MARIO JOSEPH PACMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

PETITION FOR REHEARING.

MARIO JOSEPH PACMAN,
453 South Bonnie Brae, Los Angeles 5,
Petitioner in Propria Persona.

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SUBJECT INDEX

TABLE OF AUTHORITIES CITED.

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To the Honorable Harlan Fiske Stone, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the United States:

Appellant, Mario Joseph Pacman, respectfully petitions for a rehearing in the within cause on the following grounds:

POINT I.

Without Due Process, Any Local Board May Arbitrarily Deny Any Registrant Effective and Known Selective Service Redress Which Would Exhaust Its Administrative Procedure. If Such Registrants Were Not Arbitrarily Denied Said Administrative Redress, There Would Be More Orders of Induction and Fewer Criminal Indictments.

On September 1st petitioner received notice that the classification construed by the local board to be his proper induction classification was denied. On September 2nd

petitioner became aware that this denial was based solely upon irrelevant hearsay information given by persons who had not known petitioner, and by persons with personal and other motives disentitling them to opinion. Since such information did not pertain to a proper classification, and its irrelevant contents could be proven untrue and erroneous with readily available documentary as well as testimonial evidence, petitioner requested a reconsideration so that he may serve well and best in a proper induction classification.

On September 4th petitioner received an induction order accompanied with a letter informing him that "a stay of induction can only be ordered by the State or National Director of Selective Service."[1] Upon receipt of this information, petitioner requested and had good reason to believe he had received an authoritative stay of said order until further notice, and awaiting further information, dismissed ineffective or stayed order from his mind.[2]

On September 15th petitioner received a Notice of Suspected Delinquency, and *answered it immediately, but was denied any appearance or explanation* by the local board although this was offered and requested by said Notice through September 19th.[3]

It is contended that the known Selective Service Regulations which state, *"the local board shall . . ."* were mandatory upon local boards, and that this is evidenced by the apparent mailing of the Notice of Suspected Delin-

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[1]Exhibit 12, R. 86.

[2]Exhibits J and A, Pet. 39-40.

[3]Exhibit 10, R. 53; also Pet. 19-23; and R. 88; and Rep. Tr. 215, lines 19-23.

quency by this particular local board in compliance with section 642.1 of the Selective Service Regulations.

It is contended this local board acted in an arbitrary and capricious manner when it reported said suspected delinquency to the U. S. District Attorney with D. D. S. form 279 on September 14th[4] as this act did away with any further authoritative local board decision from the very day the Notice of Suspected Delinquency was mailed, and this was prohibited by section 642.2 which stated, "(a) After mailing the Notice of Delinquency (form 281), the local board shall wait 5 days before taking further action."

It is contended the local board acted in an arbitrary and capricious manner when it denied petitioner any appearance or explanation on September 15th as said denial was prohibited by section 642.3 which stated, "If a suspected delinquent has been located as a result of the local board's efforts under section 642.2 or a suspected delinquent has reported voluntarily to a local board, the local board shall carefully investigate the delinquency. If the board finds that the suspected delinquent is innocent of any wrongful intent, the local board shall proceed to consider his case just as if he were never suspected of being a delinquent. . . ."

If petitioner had not been denied administrative redress according to section 642.3 which was admittedly known to the person who denied it, he would have proved innocence of any wrongful intent to said board with an appearance or an explanation as there had been no con-

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[4]Pet. 22.

versation between the local board and petitioner from the day which preceded the mailing of said induction order to the day any appearance or explanation was denied; no conversation between September 2nd and September 15th; nothing with which anyone could decide petitioner had a wrongful intent.[5]

Furthermore, petitioner would have shown the local board that he had agreed to respect the Selective Service decision on September 4th even with the possibility of later being confronted with a court martial.[6]

That petitioner had honestly interpreted the State Selective Service Director's telegram[7] to mean as definite a stay as permitted until further notice because this Director possessed the authority to stay *any* induction order according to sections 628.1,[8] and 627.41.[9]

That petitioner had suggested a personal effort on the part of the most authentic third party to bring about a Selective Service review for a proper induction classification, and that the information later received from this best versed liaison office had reassured petitioner that the State Selective Service Director's telegram certainly meant at least the stay of a pre-issued order; petitioner deems

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[5]Pet. 31-34.

[6]Exhibit J, Pet. 39.

[7]Exhibit A, Pet. 40.

[8]Section 628.1 is quoted in Pet. 19.

[9]*Effect of Appeal.*

627.41. Appeal stays induction. The local board shall not issue an order for a registrant to report for induction either during the period afforded him to take an appeal to the board of appeal or during the time such appeal is pending. Any such order to report for induction which has been issued shall be ineffective and shall be canceled by the local board. 7-627 242-26

it common knowledge that public employees should follow known regulations, and that a significant order of meaning import is invalid when issued with utter disregard to known regulations and in violation of such regulations.[10]

The aforegoing added to the sole and basic cause of the then effective classification gave petitioner undoubted assurance and belief that he had received a temporary stay of induction because Exhibit B (the cause)[11] had been proven so erroneous and unworthy with Exhibit K[12] that most directors would not wish to induct anyone improperly classified when the best duty which could be rendered was and is considered the induction of the greatest number with proper classification; an improperly classified inductee is known to be of no value.

It is only the local board's admitted denial of administrative redress or procedure to petitioner which prevented his service because petitioner would have preferred to chance only a possible later court martial rather than wilfully deny compliance to a then effective order which only requested an induction; a court martial would not have become as real and effective as a valid order to report until, if, and when petitioner should later be commanded to perform destructive duties. There was then a probability such a court martial would not ever come to pass, and the probability that it would never occur was definitely worth delaying an imminent criminal conviction of petitioner then, and he knew it. In fact, he very prob-

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[10]Exhibits O and N, Pet. 43-44.

[11]R. 61, and R. 150.

[12]R. 79.

ably would have served well as persons of his convictions were shortly afterwards assured assignments to definite non-destructive duties before certifying to a military oath.

Prior to receipt of the Notice of Suspected Delinquency and the arbitrary denial of the local board to afford petitioner the redress it offered, the petitioner without question and without doubt sincerely believed he had received a temporary stay of induction, and *he has never stated nor admitted* he had not received *any* stay of induction.[13]

It is wished in all earnestness that any capricious and arbitrary denial of known administrative redress or procedure by any local board should not be condoned by this Honorable Court, and that the moral factors which will cause some conscientious objector to decide to serve well under military command be restored when such moral factors are removed by the consequences of such denials.[14]

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[13]During trial, over four months had lapsed since petitioner had sincerely believed he had received a stay. During this lapse of time, after arrest, and during trial, he had learned that a stay should have been received on a specific printed form, and that the State Selective Service Director's telegram would not be considered a temporary stay of induction by the prosecuting counsel. Petitioner was asked, and he answered that he had not received "a" proper recognized stay as appears in Reporter's Transcript 223, lines 14-17. The all-inclusive "any" stay reproduced into the Record and often quoted is misleading as only the particular "a stay" was mentioned and answered to, and the whole Reporter's Transcript supports that the words "any stay" come from nowhere.

[14]It is interesting and worthy to note that here is a conviction of a Selective Service delinquent, when the documentary and testimonial facts clearly show that the now convicted delinquent *was not* even a delinquent according to Selective Service Regulation 601.5 which is "quoted" on page 23 of Petition for Writ of Certiorari, and was the definition of the Selective Service System.

For the reasons herein stated, I respectfully petition that in the interest of justice a rehearing should be granted in the within cause, and that if such a rehearing be not granted, an opinion be rendered which will prevent unjust consequences from such non-compliance to known rules or regulations. Competent counsel will prepare and appear in this cause if permitted.

Respectfully submitted,

MARIO JOSEPH PACMAN,

Petitioner in Propria Persona.

Certificate of Counsel.

I do hereby certify that, in my judgment, the foregoing petition for rehearing is well founded and I do further certify that said petition is not interposed for the purpose of delay.

MARIO JOSEPH PACMAN,

Petitioner in Propria Persona.